

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

LEXINGTON HOSPITAL CORP.
d/b/a HENDERSON COUNTY HOSPITAL,

Plaintiff,

v.

No. 09-1276

RONALD HEROMIN,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION,
DISMISSING DEFENDANT'S COUNTERCLAIM WITH PREJUDICE
AND ENTERING DEFAULT JUDGMENT AGAINST DEFENDANT

On December 22, 2010, the Plaintiff, Lexington Hospital Corp. ("Lexington") moved for sanctions against the Defendant, Ronald J. Heromin, including entry of default judgment and dismissal with prejudice of Defendant's counterclaim. The motion was referred to the magistrate judge who construed the request for a default judgment as a motion to compel discovery. Accordingly, the magistrate judge granted Heromin thirty days in which to respond to the discovery. In an order entered June 30, 2011, this Court directed Plaintiff to advise whether Heromin had complied with the magistrate judge's order concerning discovery.

On July 11, 2011, Lexington informed the Court that Defendant had not complied with its directive and again requested dismissal of the counterclaim and entry of default judgment in the amount of \$1,181,277.81 plus post-judgment interest. The request was again referred to the magistrate judge who recommended that the motion to dismiss the counterclaim be granted and that, once entry of default had been sought and obtained from the Clerk in accordance with Rule 55(a) of the Federal Rules of Civil Procedure, the Plaintiff be awarded default judgment against Heromin

in the amount of \$998,360.30, plus attorneys' fees, expenses and interest.

Lexington filed an objection to that portion of the magistrate judge's recommendation involving default, asserting that it sought such relief not pursuant to Rule 55 but as sanctions for Heromin's refusal to participate in this case and to follow the orders of this Court. The Plaintiff also provided additional clarification and support for an award of damages. In a second report and recommendation entered September 19, 2011, the magistrate judge recommended that this Court enter a default judgment against the Defendant as sanctions in the amount of \$1,221,480.63 plus post-judgment interest.

To date, there has been no objection to either report by Heromin, who, indeed, has filed nothing in this matter since his answer was entered on the docket in December 2009. Upon review of the Plaintiff's submissions, the magistrate judge's reports and recommendations, and other matters before the Court, the September 19, 2011 report and recommendation is hereby ADOPTED, the Defendant's counterclaim is DISMISSED WITH PREJUDICE and Plaintiff's request for entry of a default judgment against the Defendant as sanctions in the amount of \$1,221,480.63 plus post-judgment interest is GRANTED.

IT IS SO ORDERED this 30th day of September 2011.

s/ J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE